

DECISION RECORD

DIVISION: Migration & Refugee Division

REVIEW APPLICANT: Miss Silu Chen

VISA APPLICANTS: Mr YaoWu Chen
Mrs Sui Nog Wong
Master Yik Lun Chin

CASE NUMBER: 1507489

DIBP REFERENCE(S): OSF2012/093966

MEMBER: Margie Bourke

DATE: 8 August 2016

PLACE OF DECISION: Melbourne

DECISION: The tribunal remits the application for a Contributory Parent (Migrant) (Class CA) visa for reconsideration with the direction that the primary visa applicant meets the following criteria for a Subclass 143 visa:

- cl.143.228 of Schedule 2 to the Regulations.

The tribunal affirms the decision not to grant the secondary visa applicants Contributory Parent (Migrant) (Class CA) visas.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration on 20 March 2015 to refuse to grant the visa applicant a Contributory Parent (Migrant) (Class CA) Subclass 143 visa under s.65 of the *Migration Act 1958* (the Act).
2. The visa applicant applied for the visa on 13 November 2012. The delegate refused to grant the visa on the basis that the primary visa applicant did not meet the requirement of cl.143.228 that an assurance of support had been accepted by the Secretary of the Department of Family and Community Services (DFCS), and that the secondary visa applicants did not meet the requirement of cl.143.327 as there was no assurance of support in relation to the secondary applicants or in which they were included that had been accepted by the Secretary of DFCS. The delegate was also not satisfied that the two secondary visa applicants met the requirements of cl.143.311 and cl.143.321 as the delegate was not satisfied that the secondary visa applicants were members of the primary visa applicant's family unit at either the time of application or at the time of decision.
3. The review applicant appeared before the Tribunal on 7 July 2016 to give evidence and present arguments. The Tribunal also received oral evidence from the primary visa applicant and the second named visa applicant. The Tribunal hearing was conducted with the assistance of an interpreter in the Cantonese and Mandarin and English languages.
4. The review applicant was represented in relation to the review by her registered migration agent. The representative attended the Tribunal hearing.
5. For the following reasons, the Tribunal has concluded that the decision under review in relation to the primary visa applicant should be remitted for reconsideration and the decision under review in relation to the secondary visa applicants should be affirmed.
- 6.

CONSIDERATION OF CLAIMS AND EVIDENCE

7. MEMBER OF FAMILY UNIT
8. Cl.143.311 requires that the secondary visa applicants are members of the family unit of the person (who in this review is the primary visa applicant), and cl.143.321 requires the secondary visa applicants continue to be members of the [the primary visa applicant's] family unit at the time of decision. The visa application was lodged on 13 November 2012.
9. The second named visa applicant claimed she is the spouse of the primary visa applicant and is a member of his family unit within the meaning of r.1.12(1)(a). The third named visa applicant did not attend the hearing. The tribunal was advised he was now living in Melbourne and is the holder of a student visa. The review applicant submitted the third named visa applicant was a member of the family unit of the primary visa applicant.
10. The tribunal has considered the evidence before it. The tribunal accepts the evidence that the primary visa applicant and the second named visa applicant do not have joint investments, a joint bank account, or shared expenses or liabilities. The tribunal accepts the evidence that the primary visa applicant is not financially responsible for the third named visa applicant.

11. The tribunal accepts the evidence that the second named visa applicant resides in Hong Kong as she works as a waitress there. The tribunal accepts the evidence of the primary visa applicant that he never applied for residency in Hong Kong, and that he has never travelled to Hong Kong to visit the second named visa applicant. The Tribunal accepts the evidence of the primary visa applicant that he is retired and lives in Shanghai.
12. The tribunal is satisfied based on the translated copy of the registered marriage certificate that the parties were married and registered the marriage in China on 13 July 2012. The tribunal accepts the parties have met some of each other's relatives. The tribunal accepts the evidence that the review applicant has not met the secondary visa applicants, and in particular has not met the third named visa applicant and did not know he currently lived in the same city as she did.
13. The tribunal has considered the evidence in relation to the times the primary visa applicant and the second named visa applicant have met. The tribunal accepts the evidence that at the time of decision the parties had met three times in the last 12 months, and each time for one day only.
14. At the time of application the parties stated they had spent a total of three days together, on two occasions. The tribunal has considered the evidence of the primary visa applicant that they always met in Guang Zhou, and never in their own homes. The tribunal has considered the evidence of the second named visa applicant that she had visited the primary visa applicant in his previous home in Shanghai and he 'must have forgot'. The tribunal gives the inconsistency little weight. The tribunal has considered the evidence shows that the parties have not established a household together and have undertaken limited social activities together, and this is not indicative that the parties were in a genuine and continuing relationship.
15. The tribunal has considered the evidence of the meetings of the primary visa applicant and the second named visa applicant. The tribunal has considered that the primary visa applicant decided not to apply for residency in Hong Kong, and they both applied for a permanent Australian visa instead. However, the tribunal has also considered the evidence that the primary visa applicant has not visited the second named visa applicant in Hong Kong. The tribunal has considered the limited time the primary visa applicant and the second named visa applicant had spent together – three days at the time of application, and three days in the 12 months prior to the hearing. The tribunal has considered the submission of the representative that many Chinese couples live separately because of employment commitments. The second named visa applicant stated that she had limited time from her work as a waitress, with four days leave each month. The primary visa applicant stated he was retired.
16. The tribunal has considered the evidence that the primary visa applicant and the second named visa applicant do not have any shared financial investments, or shared property, or joint bank accounts, or shared expenses or financial liabilities. The tribunal has considered the primary visa applicant's evidence that he has not thought about future plans. The tribunal has considered the evidence of the second named visa applicant that their plans are to migrate to Australia to look after the primary visa applicant's adult daughter.
17. The tribunal has considered the evidence before it. The tribunal is not satisfied that the second named visa applicant is the spouse within the meaning of s.5F(2) at either the time of application or the time of decision. The tribunal has considered evidence in relation to the financial aspects of the relationship, the social aspects of the relationship, the nature of any household of the parties and the nature of the parties' commitment to each other. The tribunal is not satisfied that the evidence of the circumstances of the relationship is evidence that the parties are in a genuine and continuing relationship, nor that they have a mutual

commitment to a shared life as husband and wife, nor that they live together, and not separately and apart, on a permanent basis. The tribunal is not satisfied that the second named visa applicant is the spouse of the primary visa applicant at either the time of application or at the time of decision. The tribunal is not satisfied the second named visa applicant is a member of the family unit of the primary visa applicant within the meaning of r.1.12(1)(a) at either the time of application or at the time of decision.

18. The tribunal has considered the evidence before it. The tribunal has found the second named visa applicant is not the spouse of the primary visa applicant, and therefore the third named visa applicant is not the dependent child of the primary visa applicant. The tribunal is satisfied, based on the evidence, that the primary visa applicant has not provided financially for the third named visa applicant. The tribunal notes the third named visa applicant was aged under 18 years at the time of application and resided with the second named visa applicant in Hong Kong. The tribunal accepts the third named visa applicant is aged over 18 years and residing in Melbourne as a student visa holder at the time of decision. The tribunal is satisfied that the third named visa applicant is not the dependent child of the primary visa applicant within the meaning of r.1.03 at the time of application, and the third named visa applicant is not the dependent child of the primary visa applicant within the meaning of r.1.03 and r.1.05A at the time of decision. The tribunal is alternatively satisfied based on the evidence that the third named visa applicant is not a relative of the primary visa applicant who is usually resident in the primary visa applicant's household and dependent upon the primary visa applicant. The tribunal is satisfied that the third named visa applicant is not a member of the primary visa applicant's family unit within the meaning of r.1.12(1)(b) or (e) at either the time of application or at the time of decision.
19. For the above reasons, the tribunal is satisfied that the second and third named visa applicants are not members of the primary visa applicants family unit, and do not meet the requirements of cl.143.311 or cl.143.321.

20.

21. ASSURANCE OF SUPPORT

22. The second issue in the present case is whether the applicants met the requirement that an assurance of support in relation to the applicants has been accepted by the Secretary of DCFS.
23. As the tribunal has found that the second and third named visa applicants do not meet the requirements of cl.143.311 at the time of application and cl.143.321 at the time of decision, the tribunal will only consider the issue of assurance of support in relation to the primary visa applicant.
24. Cl.143.228 requires that the minister be satisfied that an assurance of support in relation to the primary visa applicant has been accepted by the Secretary of DFCS.
25. The review applicant provided the tribunal with a copy of the decision record of the delegate dated 20 March 2015 which recorded that the assurance of support applied for by the applicants had been rejected.
26. At the hearing the review applicant and primary visa applicant stated that another assurance of support was to be arranged by the representative. The representative submitted that the aunt intended to arrange the assurance of support but as there were two issues, the aunt had not applied for the assurance of support at the time of the hearing. The tribunal allowed the review applicant 14 days to provide confirmation that the assurance of support had been lodged.

27. The review applicant's representative provided a letter attached to an email dated 20 July 2016 which stated the assurances of Support had been lodged with Centrelink. By email dated 21 July 2016 the review applicant's representative provided a copy of the application lodged with Centrelink. By email dated 29 July 2016 the review applicant's representative advised in writing that the "Bond is fully completed". The tribunal received confirmation from the Department via email dated 3 August 2016 that the Assurance of Support was accepted by DHS on 1 August 2016, and the current status of the Assurance of Support for the primary visa applicant was accepted. The tribunal is satisfied that the Department of Human Services (DHS) has assumed the role of the DFCS.
28. Based on the evidence before it, the tribunal is satisfied that the primary visa applicant meets the requirements of cl.143.228 and the Minister is satisfied that an Assurance of Support has been accepted by the relevant Department.
29. Given this finding, the appropriate course is to remit the application of the primary visa applicant to the Minister to consider the remaining criteria of the Subclass 143 visa.
- 30.

DECISION

31. The tribunal remits the application for a Contributory Parent (Migrant) (Class CA) visa for reconsideration with the direction that the primary visa applicant meets the following criteria for a Subclass 143 visa:
 - cl.143.228 of Schedule 2 to the Regulations.
32. The tribunal affirms the decision not to grant the secondary visa applicants Contributory Parent (Migrant) (Class CA) visas.

Margie Bourke
Member